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REMARKS

After entry of this Amendment A, claims 1-13, 15-23, 25, and 27 will be pending. Applicants have amended claims 1-6, 11, 15-16, 19, 21, 23, 25, and 27 and have cancelled claims 14, 24, and 26. Specifically, claims 1 and 23 have been amended to require the rheology enhancer to be selected from the group consisting of mineral oil and ethylene/propylene/styrene copolymers; mineral oil and butylene/ethylene/styrene copolymers; mineral oil and styrene; petrolatum and styrene copolymers; polyisobutylene; mineral oil and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; hydrogenated polyisobutene and butylene/ethylene/styrene copolymers; hydrogenated polyisobutene and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; petrolatum and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isononyl isomonanoate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isododecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isohexadecane and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; isopropyl palmitate and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; and combinations thereof. Support for the above amendment can be found in previously presented dependent claims 24 and 26 and in the instant specification on page 10, paragraph 28, and on pages 15-16, in Tables 4 and 6. Additionally, Applicants have amended claims 1-6, 11, 15-16, 19, 21, and 23 to correct typographical errors.

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Applicants respectfully request reconsideration and allowance of all pending claims.

1. Objection of Claims 1-6, 11, 14-16, 19, 21, and 23.

Claims 1-6, 11, 14-16, 19, 21, and 23 have been objected to for improperly containing parentheses. Claims 1-6, 11, 15-16, 19, 21, and 23 have been amended to remove the parentheses. Additionally, claim 14 has been canceled. As such, the objection to claims 1-6, 11, 14-16, 19, 21, and 23 should be withdrawn as moot.

2. Rejection of claims 1-27 under 35 U.S.C. §§102(b).

Claims 1-27 have been rejected under 35 U.S.C. § 102(b) as anticipated by Krzysik et al. (U.S. 6,149,934).

Claim 1, as amended herein, is directed to a topical ointment comprising from about 10% (by total weight of the ointment) to about 89% (by total weight of the ointment) of an emollient, from about 10% (by total weight of the ointment) to about 50% (by total weight of the ointment) of a structurant, and from about 0.1% (by total weight of the ointment) to about 40% (by total weight of the ointment) of a rheology enhancer. The rheology enhancer is selected from the group consisting of mineral oil and ethylene/propylene/styrene copolymers; mineral oil and butylene/ethylene/styrene copolymers; mineral oil and styrene; petrolatum and styrene copolymers; polyisobutylene; mineral oil and ethylene/propylene/styrene copolymers and butylene/ethylene/styrene copolymers; hydrogenated polyisobutene and butylene/ethylene/styrene copolymers; hydrogenated polyisobutene and ethylene/propylene/styrene copolymers and

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butylene/ethylene/styrene copolymers; petrolatum and
ethylene/propylene/styrene copolymers and
butylene/ethylene/styrene copolymers; isononyl isononanoate and
ethylene/propylene/styrene copolymers and
butylene/ethylene/styrene copolymers; isododecane and
ethylene/propylene/styrene copolymers and
butylene/ethylene/styrene copolymers; isohexadecane and
ethylene/propylene/styrene copolymers and
butylene/ethylene/styrene copolymers; isopropyl palmitate and
ethylene/propylene/styrene copolymers and
butylene/ethylene/styrene copolymers; and combinations thereof.

U.S. 6,149,934 ('934) discloses an absorbent article having a bodyside liner that includes a lotion formulation for reducing the abrasion of the skin caused by the liner and for improving skin health. The lotion formulation comprises from about 5 to about 95 weight percent of an emollient, from about 5 to about 95 weight percent of a wax, and, optionally, from about 0.1 to about 25 weight percent of a viscosity enhancer.

Specifically, '934 fails to disclose the specific rheology enhancers as required by amended claim 1. At best, the suitable viscosity enhancers disclosed in the '934 reference include polyolefin resins, lipophilic/oil thickeners, ethylene/vinyl acetate copolymers, polyethylene, silica, talc, colloidal silicone dioxide, zinc stearate, cetyl hydroxyl ethyl cellulose and other modified celluloses and the like and mixtures thereof.¹

As stated in M.P.E.P. §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Since '934 fails to disclose the specific rheology

¹ U.S. Patent No. 6,149,934 at column 10, lines 57-62.

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enhancers required by amended claim 1, '934 fails to disclose each and every limitation of amended claim 1. As such, claim 1 is novel over the '934 reference.

Claims 2-13, 15-22, and 27 depend directly or indirectly from claim 1. As such, claims 2-13, 15-22, and 27 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

Amended claim 23 is similar to amended claim 1 and further requires the topical ointment to comprise from about 0.1% (by total weight of the ointment) to about 10% (by total weight of the ointment) of a particulate material, and from about 0.1% (by total weight of the ointment) to about 10% (by total weight of the ointment) of a low HLB surfactant. Claim 23 is patentable for the same reasons as claim 1 set forth above, as well as for the additional elements it requires. Furthermore, claim 25, which directly depends from claim 23, is patentable for the same reasons as claim 23 set forth above, as well as for the additional elements it requires.

3. Rejection of claims 1-14 and 19-22 under 35 U.S.C. § 102(b).

Claims 1-14 and 19-22 have been rejected under 35 U.S.C. § 102(b) as anticipated by Krzysik et al. (U.S. 6,287,581).

Claim 1, as amended herein, is discussed above.

U.S. 6,287,581 ('581) discloses a skin barrier enhancing body side liner on an absorbent article comprising a lipid-enriched hydrophobic composition. The lipid-enriched hydrophobic composition comprises from about 0.1 to about 95 weight percent natural fats or oils, from about 0.1 to about 10

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weight percent sterols and sterol derivatives, from about 0.5 to about 20 weight percent of humectant, from about 1 to about 20 weight percent of water-in-oil emulsifying surfactant/surfactant combination having an HLB range from about 3 to about 6, from about 5 to about 95 weight percent emollient, from about 5 to about 95 weight percent wax, and from about 1 to about 25 weight percent viscosity enhancer.

Specifically, '581 fails to disclose the specific rheology enhancers as required by amended claim 1. At best, the suitable viscosity enhancers disclosed in the '581 reference include polyolefin resins, polyolefin polymers, ethylene/vinyl acetate copolymers, polyethylene and the like and mixtures thereof.²

As stated above, for a claim to be anticipated under M.P.E.P. §2131, each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference. Since '581 fails to disclose the specific rheology enhances required by amended claim 1, '581 fails to disclose each and every limitation of amended claim 1. As such, claim 1 is novel over the '581 reference.

Claims 2-13 and 19-22 depend directly or indirectly from claim 1. As such, claims 2-13 and 19-22 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

4. Rejection of claims 15-18 and 23-27 under 35 U.S.C. §103(a).

² U.S. Patent No. 6,287,581 at column 10, lines 25-29.

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Claims 15-18 and 23-27 have been rejected under 35 U.S.C. § 103(a) as unpatentable over Krzysik et al. (U.S. 6,287,581) in view of Mitzuguchi et al. (U.S. 5,520,917).

Claims 15-18 and 27 depend from claim 1, which is discussed above. Claims 15-18 further require the topical ointment to comprise a particulate material. Additionally, claim 27 lists further specific rheology enhancers to use in the topical ointment. Furthermore, claim 25 depends from claim 23, which is discussed above and further requires specific rheology enhancers to use in the topical ointment. Claims 1 and 23, as amended herein, are patentable for the reasons set forth above. In particular, the '581 reference fails to disclose the rheology enhancers of claims 1 and 23.

Additionally, as noted by the Office, the '581 reference fails to teach or suggest a particulate material in lipid-enriched hydrophobic composition, as required in claims 15-18, 23, and 25. In an attempt to find each and every element of claims 15-18 and 23, 25, and 27 as required by the M.P.E.P. for a determination of *prima facie* obviousness, the Office cites U.S. 5,520,917 ('917) for combination with '581.

The '917 reference is directed to materials in the form of spherical fine particles having a coloring pigment enclosed therein by the interface reaction process or by preparing a gel from an aqueous solution of metal oxide sol. These particles can be used in cosmetic compositions to produce a vivid color free from irregularities. Specifically, the cosmetic compositions containing these particles can be smoothly spreadable when applied. Two preferable coloring pigments for use in these spherical particles include silica and talc.

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In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art references must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine the references, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under numbers (1) and/or (2) above, as the cited references, alone or in combination, have not taught or suggested all of the claimed limitations and there is no motivation or suggestion to combine the references to arrive at each and every limitation of Applicants' claims 15-18, 23, 25, and 27.

As noted above, '581 fails to teach or suggest each and every limitation of claims 1 and 23, from which claims 15-18, 25, and 27 directly or indirectly depend. Specifically, no where in the '581 reference is it taught or suggested to use the specific rheology enhancers of claims 1 and 23 in the lipid-enriched hydrophobic composition of '581. Additionally, as noted by the Office, the '581 reference fails to teach or suggest a particulate material in its lipid-enriched hydrophobic composition, as required in claims 15-18, 23, and 25.

The '917 reference fails to overcome the above shortcomings. While the '917 reference does disclose particulate material, specifically particulate material including silica and talc, no where does the '917 reference teach or suggest the rheology enhancers required in claims 1 and 23. Specifically, the '917 reference fails to disclose any rheology enhancers. As such, neither of the cited references disclose the rheology enhancers as required in claims 1 and 23.

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As such, neither of the cited references disclose each and every limitation required by claims 15-18, 25, and 27, which directly or indirectly depend on claim 1 or claim 23.

Notwithstanding the above, even if the cited references did teach or suggest each and every limitation of claims 15-18, 23, 25, and 27 (which, as Applicants have asserted above, the references clearly do not teach or suggest the rheology enhancers as required in claim 1 and 23), no where in the cited references is there motivation or suggestion to combine the references. Specifically, as noted above, the '581 reference is directed to a superior skin barrier enhancing body side liner on an absorbent article comprising a lipid-enriched hydrophobic composition. More specifically, the lipid-enriched hydrophobic composition of '581 is designed to protect, maintain, and/or recover skin barrier against irritants in biological fluids, such as urine, feces, and vaginal secretions.³ As such, why would one skilled in the art, reading the '581 reference, look to the '917 reference, which is directed to cosmetic compositions that produce a vivid color free from irregularities and suitable beautifying effects as in respect of tinting strength and hiding power?⁴ One skilled in the art simply would not, and could not, be motivated to use the particulate material used in the cosmetic composition of '917 in the skin barrier enhancing lipid-enriched hydrophobic composition of '581.

As the cited references fail to teach or suggest each and every limitation of claims 1 and 23 and of claims 15-18, 25, and 27, which depend directly or indirectly on claim 1 or claim 23, and further, as there is no suggestion or motivation to combine the cited references to arrive at each and every limitation of

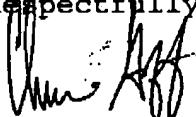
³ U.S. 6,287,581 at column 2, lines 34-36.

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claim 1, 15-18, 23, 25, and 27, claims 1, 15-18, 23, 25, and 27 cannot be said to be obvious in view of the cited references.

In view of the above, Applicants respectfully request favorable reconsideration and allowance of all pending claims. The Commissioner is hereby authorized to charge any fee deficiency in connection with this Amendment B to Deposit Account Number 19-1345 in the name of Senniger, Powers, Leavitt & Roedel.

Respectfully submitted,


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* U.S. 5,520,917 at column 2, lines 49-54.